

LABOUR DEPARTMENT

The 6th December, 1994.

No. 14/13/87-6Lab./938.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of The Meham Co-operative Sugar Mills Ltd., Meham (Rohtak) *versus* Rajender :

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 630 of 1992

between

SHRI RAJENDER, S/O SHRI KAPOOR SINGH, VILLAGE AND P. O. SUDANA, DISTRICT ROHTAK .. *Workman*

and

THE MANAGEMENT OF M/S MEHAM CO-OPERATIVE SUGAR MILLS LTD., MEHAM, DISTRICT ROHTAK

Present :

Shri H. R. Vats, authorised representative for the workman.

Shri H. S. Dangi, authorised representative for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/FD/26—92/17591—96, dated 2nd April, 1992 :—

Whether the termination of services of Shri Rajender Singh is justified and in order? If not, to what relief she is entitled?

2. The workman and the management were summoned. The workman appeared and relying upon his demand notice under Section 2-A of the Industrial Dispute Act, 1947 which is that the workman was appointed on daily wages as Mistry on 27th November, 1990. The service record of the workman has been unblemished throughout his tenure. The services of the workman were terminated on 31st July, 1991 without assigning any reason after more than 240 days which amounts to retrenchment under Section 2(00) of the Industrial Dispute Act and the retrenchment is not complied with Section 25-F of the Industrial Disputes Act. As the respondent/management has not complied with Section 25—F (a)(b) hence the termination order of the workman is illegal null and void and the against the principle of natural justice and there are more than 300 days workers in the Mill. In retrenchment cases sanction of the Government under Section 25-N of the Industrial Dispute Act is necessary which was taken. Hence this demand notice was filed that the termination order of the workman dated 31st July, 1991 may kindly be quashed, the workman be reinstated with continuity of service and with full back wages and all other service benefits.

3. The written statement has been filed by the respondent pleading that the claim petition of the workman is not maintainable in the present form; the workman has no *locus standi* to bring the present petition; that there is no cause of action accrued to the workman; that the claim petition has not been verified as required by the law; that the workman is estopped by his act and conduct to bring the present claim petition against the answering management. The workman was engaged in the seasonal establishment under the management on daily wages for casual and seasoned Labour on the request made by the workman with an agreement that the service is to be brought to and end on the finishing of seasonal work. The workman was relieved as the reason was over in pursuance of agreement of the workman as mentioned herein but the workman has not completed the 240 days service there is no illegally on part of the management hence the workman demand notice is liable to be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

1. Whether the claim petition of the workman is not maintainable.
2. Whether the workman has no *locus standi* to bring the present suit?

3. Whether the claim petition is not verified as required by law ;
4. As per terms of reference ?
5. Relief ?

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 4 :—

6. The workman has come into witness box as WW-1. and closed his evidence. The management has not been able to examine any witness at all and evidence was closed by the Court orders.

7. The workman has made statement that he was appointed on 27th November, 1990 as Mistry and worked upto 31st July, 1991 and thus completed for more than 240 days service,

8. There is no evidence by the management that he has not served for 240 days of service. In cross-examination of the workman is that he has not completed 240 days of service as required of the workman to prove that he had served for about 240 days of service for which the learned authorised representative for the management contended that he has not able to prove by cogent evidence that he had completed 240 days service. It is true that the management was also required to prove that he had not completed 240 days service in a year but there no evidence of the management at all, hence the statement of the workman is to be taken as true.

9. The question is whether the workman has completed 240 days of service or not. To prove this the workman has made statement. The management has not produced any evidence. Here is requirement of the applicant to prove that he had served for 240 days in a year. The statement of the workman is only in effect and there is no other evidence by way of oral evidence or by way of documentary evidence. The suggestion of the management is that he had not served for 240 days of service in a year.

10. The workman had not got any appointment letter to prove that he had started working in the respondent in November, 1990 as alleged by the applicant. The retrenchment is effected only when the workman has completed 240 days of service in a year as given in Section 2(00) of the Industrial Dispute Act. So the workman is proved that he had worked for more than 240 days service in a year. As the workman has not able to prove by cogent evidence that he has served for 240 days in a year. I am of the view that the reference petition is not maintainable and claim petition is not maintainable I decide this issue against the workman.

Issue No. 2 :

11. As the workman has not served for 240 days service in a year, his case is not come under the terms retrenchment as defined in Section 2(00) of the Industrial Disputes Act and thus the workman has no *locus standi* to bring the present case. As such I decide this issue also against the workman.

Issue No. 1 and 3 :

12. Both these issues are not pressed or argued by the parties. Hence I decide both these issues against the management.

Issue No. 5 (Relief) :

13. In view of my findings on the above issues the reference petition fails and is dismissed. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

P. L. KHANDUJA,

The 9th November, 1994.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 630-92/2844, dated the 11th November, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments. Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.